

REMARKS

The Official Action mailed March 25, 2005, has been received and its contents carefully noted. This response is filed within three months of the mailing date of the Official Action and therefore is believed to be timely without extension of time. Accordingly, the Applicant respectfully submits that this response is being timely filed.

The Applicant notes with appreciation the consideration of the Information Disclosure Statements filed on November 13, 2001, March 7, 2002, and February 16, 2005. A further Information Disclosure Statement was filed on March 29, 2005 (received by OIPE March 31, 2005). The Applicant respectfully requests that the Examiner provide an initialed copy of the Form PTO-1449 evidencing consideration of this Information Disclosure Statement.

Claims 1, 4-12, 15-25, 28-38, 41-49, 51-59, 61-83 and 85-92 were pending in the present application prior to the above amendment. Claims 1, 4-11, 69 and 75 have been canceled, independent claims 12, 23, 36, 49, 59 and 81 have been amended to better recite the features of the present invention. Accordingly, claims 12, 15-25, 28-38, 41-49, 51-59, 61-68, 70-74, 76-83 and 85-92 are now pending in the present application, of which claims 12, 23, 36, 49, 59 and 81 are independent. Favorable reconsideration is requested.

Paragraph 3 of the Official Action rejects claims 1-4, 12-15, 23-28, 36-41, 49-51, 59-61 and 69-85 as obvious based on U.S. Patent No. 5,882,761 to Kawami et al. The Applicant respectfully traverses the rejection because the Official Action has not made a *prima facie* case of obviousness.

As stated in MPEP §§ 2142-2143.01, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim

limitations. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). See also In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

The prior art, either alone or in combination, does not teach or suggest all the features of the independent claims. Specifically, the independent claims recite a drying agent having a porosity of 20% or more. Kawami does not teach or suggest the above-referenced features of the present invention. The Official Action concedes that Kawami does not teach "the drying agent having a porosity of 20% or more" (page 5, Paper No. 20050309). The Official Action asserts that "[it] would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to form the drying agent having a porosity of 20% or more ... since the Examiner takes Official Notice that high porosity drying agent bodies are old and well known in the art" (Id.) and, without support, the Official Action further asserts that "[one] of ordinary skill in the art would have been motivated to form a drying agent into a body with a high porosity to enhance the effectiveness of the drying agent by increasing its surface area and allowing more of the agent to contact/react with moisture" (pages 5-6, Id.). The Applicants respectfully disagree and traverse the above-referenced assertions in the Official Action.

MPEP § 2144.03 discusses whether it is appropriate to rely on allegedly well known prior art. Specifically, this section provides as follows:

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as

being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. In re Ahlert, 424 F.2d at 1091, 165 USPQ at 420-21. See also In re Grose, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979) (“[W]hen the PTO seeks to rely upon a chemical theory, in establishing a prima facie case of obviousness, it must provide evidentiary support for the existence and meaning of that theory.”); In re Eynde, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) (“[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice.”).

In the present case, the Applicant respectfully submits that the facts asserted to be well known (“a drying agent having a porosity of 20% or more”) are not capable of instant and unquestionable demonstration as being well-known. The Applicant further respectfully submits that it is not appropriate for the Official Action to assert that a drying agent having a porosity of 20% or more is conventional and well known in the art without citing a prior art reference. This is particularly true with respect to the present claims that recite, in claim 12 for example, that the drying agent chemically, not physically, absorbs moisture. It also appears that the above assertions in the Official Action are assertions of technical facts in the areas of esoteric technology or specific knowledge. Such assertions must always be supported by citation to some reference work recognized as standard in the pertinent art.


If such a reference as described above cannot be identified, then the Applicants respectfully submit that Kawami does not teach or suggest a drying agent having a porosity of 20% or more.

Since Kawami does not teach or suggest all the claim limitations, a *prima facie* case of obviousness cannot be maintained. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a) are in order and respectfully requested.

Also, with respect to dependent claims, "SOUTHWICK, Jr." is mentioned at page 6 of the Official Action. It appears this may have been copied from an earlier Official Action. Therefore, it is unclear whether U.S. Patent No. 2,578,324 to Southwick, Jr. is officially of record with respect to the obviousness rejection of the claims.

Should the Examiner believe that anything further would be desirable to place this application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,



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